

law which were also rules of reasonable political adjustment. As well ask some clerical heresy-hound to sit on a commission to adjust the Athanasian Creed to the requirements of modern science.

The New Republic protests against Mr. Pierce Butler's appointment not because we dislike and disbelieve in the preservation by the Supreme Court of its existing political functions but because we believe in them and would much prefer to see them continued. The Supreme Court has, we think, frequently abused the discretion which under our existing practice it exercises in reviewing legislation. It has repeatedly declared invalid by the narrow margin of one or two votes state or federal statutes whose unconstitutionality was at least extremely questionable. But the exercise of that power by some branch of the government is essential to the operation of a system of checks, balances and rights, such as the American fabric of government is, and we would rather see it exercised by a court than by the federal legislature. If the judicial review of legislation is abandoned, the American people will abandon an ingredient of unique value in their own polity and in their own human relationship to that polity. They will abandon an institution which is intended to submit important controversies, after they have been fought out in other regions of government, finally to the rule of reason derived from accepted formulations of political truth. The abandonment of the existing rule of reason, unreasonable as its expressions sometimes are, will render them much more exposed to the substitution for the rule of something resembling reason the rule of something resembling violence. We trust they will not have to adopt the revolutionary expedient of putting congressional in the place of judicial interpretation of the Constitution, but adopt it they will, if the Supreme Court is to be packed with Pierce Butlers. For in the hands of warped men of this kind the Court will itself deny the rule of reason. It will become a medium of obscurantism, immobility and implicit violence rather than of enlightenment, progress and constructive consent.

The Meaning of the Message

A PRESIDENT'S message may mean much or little. What a strong President, working in close cooperation with the legislative branch, may have to say will be scrutinized closely by every citizen. His message offers a rough forecast of the course of legislation. Mr. Harding is not a strong President, and his relations with Congress have never been those of effective co-

operation. Only by accident will any of his recommendations even receive serious consideration. As a public document his message means nothing at all.

Nevertheless, the message is worth close study. What the President has to say in his message after a great upheaval like the last election is significant from the point of view of party politics. When the nature of the election results became known, everybody wanted to know what effect they would exert on the President and the group, in the Cabinet and outside of it, upon which he depends for suggestion and advice. Would the administration try to readjust itself to the new conditions and to assert leadership of the new forces released by the election? Or would it assume that the progressive victories represented only a momentary aberration from traditional principles, a passing storm best weathered by remaining below the deck? Is Harding going to attempt a compromise which will hold the Eastern and Western wings of the party together, or will he permit the lines of division to be more deeply drawn, with the inevitable result of a serious struggle in the Convention, of a possible bolt and the formation of a new party?

The message goes a long way toward answering these questions. All through it there runs a refrain of stand-pattism. We are prospering pretty well, as matters are. We're not through our post-war readjustments, and we still suffer from the fact that "everyone, speaking broadly, craves readjustment for everybody but himself." This is apparently a covert allusion to the fact that labor has not accepted deflation in the spirit that the President and Mr. Mellon could have commended. We should be doing much better than we are if it had not been for the railway and coal strikes, "which had no excuse for their beginning, and less justification for their delayed settlement." The only suggestion the President is able to offer is the old one of compulsory arbitration by an impartial tribunal representing the public alone, instead of a body like the Railway Labor Board giving representation to the parties at interest. Certainly Mr. Harding does not advance far toward progressive leadership with a program like that.

Neither does he make progress by his handling of the immigration problem. To him it is not an industrial problem at all, but a problem of bolshevism and illiteracy. By some process of reasoning we cannot follow, Mr. Harding convinces himself that aliens would be drawn toward literacy and Americanism if they could only be registered and kept continually under the government's

eye. The President is clearly unaware of the fact that outside of the Washington office of Mr. Daugherty the alien panic has subsided and cannot possibly be revived for the support of anything so un-American as the registration plan and its administrative implications.

In his discussion of the railway problem Mr. Harding supposes, no doubt, that he is holding out an olive branch to the progressives. The progressive West demands a reduction in rates, and Mr. Harding agrees that they ought to be reduced. But every proposal he makes for preparing the way for reduction looks to increasing the profits of the railways, first of all. They ought to be grouped into more economical systems; they ought to pool their freight cars. All that is good sense, no doubt. But the most striking item in the President's recommendations is the elimination of motor competition with the railroads. We invite Secretary Wallace to make this recommendation acceptable to the farmers, who have found in the motor truck one means of escaping railway rates which, whether reasonable or not in themselves, drain all the blood out of the farmer.

There are, it is true, two progressive patches in the message. One, which we are inclined to attribute to Secretary Wallace, deals with the subject of rural credits. It admits the desirability of providing for more liberal land credits as well as for production credits. In their present distress the farmers want something more than that. They are thinking of credits as a means of holding their wheat and corn, cotton and tobacco, for higher prices. In other words, the kernel of the farmers' demand for credit is the project of valorization. President Harding is offering them the shell, and he will find them duly grateful.

The other progressive patch we may attribute to Mr. Hoover. It consists of the super-power project, with the promise of industrial efficiency and lower cost. Economically the project is sound and significant. Politically it is valueless, because neither progressives nor conservatives are thinking now in super-power terms. Two years ago the project might have struck fire. Two years ago the sedate comments on foreign policy might have borne a political meaning. Today they simply make men nod.

If the Republican party hangs together, it will by virtue of some force other than that exhibited by the President and the group surrounding him. So much the message makes clear. There is no resilience in Mr. Harding and his advisers. They have no capacity whatever of readjusting them-

selves to the conditions of the day. They are an incubus which the party will have to rid itself of, even, if necessary, at the cost of diving under the waters of defeat.

Mr. Justice Holmes

ON December 15, 1882, Oliver Wendell Holmes, Jr., became an Associate Justice of the Supreme Judicial Court of Massachusetts. Twenty years later, on December 8, 1902, he took his seat on the United States Supreme Court. The soldier's faith, the faith he lived in war and lives in peace, he has described as "having known great things, to be content with silence." But for us, for whom the "great things" are still being wrought by the Justice—we cannot be content with silence. And so the New Republic also wishes to mark the anniversary of forty years of judicial service, and twenty years of Mr. Justice Holmes with rejoicing and with gratitude. "We live by symbols"; and the judicial work of Mr. Justice Holmes is the symbol at once of the promise and the fulfillment of the American judiciary.

With myriad variations his great juristic patterns have been woven. The life of the law has not been logic; it has been experience. The Constitution is an experiment, as all life is an experiment. In these aperçus we have the clues to his two thousand odd opinions, "samples of his best," long since acclaimed by the world's juristic masters as work done in the grand manner and nobly done. The conflict between the nation and the states, between liberty and authority—these are the themes that have solicited his judgment. He has been vigilant for the Union, for which he fought at Ball's Bluff and Antietam and Fredericksburg; and equally watchful of needed scope for the states, upon which the Union rests. His opinion in the first Child Labor case vindicates the basis of federal power as only his eloquence can illuminate, while his brief opinion in *Truax v. Corrigan* is a massive warning against straight-jacketing the states, in dealing with their local problems, through pedantic and partisan reading of the Fourteenth Amendment. To be sure, these are dissenting opinions, as are some of his greatest utterances—but they are dissents that shape history and record prophecy.

He has found the Constitution equal to the needs of a great nation at war and devoid of obstacles to beneficent treaties with other nations. But, according to the same Constitution, the individual must not be sacrificed to the Moloch of fear; there is a sanctuary in law even for those outlawed by prevalent opinion: